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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,	
Plaintiff and Respondent,	**A134277**
v.	
NICHOLAS MICHAEL ZUNO,	**(San Mateo County**
Defendant and Appellant.	**Super. Ct. No. SC072848)**

Defendant Nicholas Michael Zuno appeals his conviction by court trial of possession of a controlled substance, to wit, methylenedioxyamphetamine (Health & Saf. Code, § 11377, subd. (a)) (count 1)) and misdemeanor resisting a police officer (Pen. Code, § 148, subd. (a)(1)) (count 2). As to count 1, the court found true a 2008 robbery strike conviction allegation (*id.*, §§ 212,5, subd (c), 1170.12, subd. (c)(1)).[1] The court also found defendant had violated his probation which was imposed following the 2008 robbery conviction. His counsel has advised that examination of the record reveals no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel informed defendant in writing that a *Wende* brief was being filed and defendant had the right to personally

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[1] At sentencing, the court struck the prior strike conviction allegation and sentenced defendant to the 16-month lower term on the Health and Safety Code section 11377, subdivision (a) violation, to be served consecutively with the previously imposed and suspended three-year term on the robbery prior. On the misdemeanor, defendant was granted credit for time served.

file a supplemental brief in this case within 30 days. No supplemental brief has been filed. No arguable issues are found and we affirm.

<div style="text-align:center">BACKGROUND</div>

A March 28, 2011 amended information charged defendant in count 1 with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and a robbery strike prior (Pen. Code, §§ 212.5, subd. (c), 1170.12, subd. (c)(1)), and in count 2 with misdemeanor unlawfully resisting a police officer (*id*., § 148, subd. (a)(1)). At the arraignment that day, the court granted his request to proceed by a "slow plea." It was stipulated that evidence consisting of the preliminary hearing transcript, the alleged controlled substance, a lab report, and the certified prison packet would be admitted in support of the charges. The following day, with the agreement of defense counsel, the court permitted the People to reopen the case to permit testimony by San Mateo Police Officer John Rink as to whether the drugs possessed by defendant constituted a useable quantity.

The preliminary hearing transcript reveals the following: On the evening of January 22, 2011,[2] Rink and two other officers conducted a traffic stop of a car occupied by five persons, including defendant, who was seated in the right rear passenger seat. When asked for identification, defendant used his left hand to retrieve and look through his wallet, but did not use his right hand. When Rink shined his flashlight on defendant, he saw that defendant had a clear plastic baggie with orange printing clenched in his right hand. When asked what was in his hand, defendant put his hands underneath his knees and refused Rink's repeated order to remove them from underneath him. After a brief struggle, Rink was able to bring defendant's right hand out of the car window; defendant then put his left hand behind the car's seat. Defendant refused Rink's several more demands that he bring his hand out from behind the seat. When the other two officers removed their firearms and pointed them at defendant, he put his left hand out the

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[2]   The parties stipulated that the offense was committed in 2011, not 2010 as reflected in the preliminary hearing transcript.

window and was handcuffed. After the car's occupants were removed, a search of the car turned up a clear plastic baggie with orange print containing four pills that Rink recognized as MDMA, commonly known as ecstasy. The baggie appeared to be the one Rink had seen clenched in defendant's hand. The pills tested positive for methylenedioxyamphetamine, also known as MDMA and MDA, and had a net weight of .76 grams. Rink opined that the four pills were a usable quantity of methylenedioxyamphetamine.

The court found defendant guilty of counts 1 and 2, and found he violated his probation. The probation department's May 2011 report recommended denial of defendant's request for probation and a state prison sentence. Thereafter, a diagnostic study of defendant was ordered (Pen. Code, § 1203.03) and proceedings were suspended. The December 2011 diagnostic study report recommended that defendant be incarcerated.

At the January 4, 2012 sentencing hearing, the court granted defendant's *Romero* motion (*People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497), denied probation, imposed the mitigated 16-month term on count 1, and sentenced defendant to credit for time served on the count 2 misdemeanor. The court imposed the three-year sentence on the prior robbery conviction, which had previously been imposed and suspended, and ordered the 16-month sentence on count 1 to run concurrent with that three-year term. The court also imposed a $40 court operations fee (Pen. Code, § 1465.8), a $200 restitution fund fine (*id.*, § 1202.4, sub. (b)), a $200 parole revocation fine, suspended pending completion of parole (*id.*, § 1202.45), and a criminal conviction assessment (Gov. Code, § 70373). The court also ordered defendant to register as a narcotics offender (Health & Saf. Code, § 11590) and ordered genetic marker testing (Pen. Code, § 296). The court awarded defendant 774 days of presentence credit against the term on the probation violation and 396 days of presentence credit on the current charges.

Defendant was adequately represented throughout the proceedings. No arguable issues are shown.

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DISPOSITION

The judgment is affirmed.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.